IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.100 OF 2006

Mallinath Apparao Shelke : Applicant.

versus

The State of Maharashtra : Respondent.

Mr.V.V.Purwant for the applicant.

Ms.M.M.Deshmukh, APP, for the State/respodnent.

CORAM : V.M.KANADE, J.

DATED : 13th January 2006.

ORAL ORDER

1. Heard the learned counsel appearing on behalf of the applicant and learned APP appearing on behalf of the State/respondent.

2. The applicant is apprehending his arrest in connection with C.R.No.170/2005 registered by Akalkot North Police Station and has filed this application for anticipatory bail under Section

438 of the Criminal Procedure Code.

3. The prosecution case is that the deceased was assaulted on his stomach by Girmal Yamaji and as a result of the said assault, the deceased died on the next day at 6.00 a.m. F.I.R. has been lodged after ten days on 16.12.2005. In the complaint, the mother of deceased has alleged that her son was having heart ailment for more than five years. Accused Girmal Yamaji had a grudge against him on account of previous enmity. She has alleged that the said Girmal Yamaji had assaulted her son on the instigation of the present applicant.

4. It is an admitted position that no post mortem was performed on the deceased and the complaint itself was lodged after ten days. The applicant had been recently elected as a chairman of Shelke High School i.e. about 6-7 months before the incident. The cause of death mentioned in the Medical Certificate, issued by Ashwini Sahakari Rugnalaya & Research Centre Nyt. Solapur, as sever mitral stenosis with pulmonary edema with cardiogenic shock. It is further stated in the certificate at clause 6 that there

were no symptoms of abdominal injury. Considering the fact that there is ten days delay in filing the FIR and also taking into consideration the medical certificate issued by the Medical Superintendent of the hospital where the deceased died, it is not possible to accept the prosecution case regarding the assault on the abdomen of the deceased. The delay in filing the F.I.R. has not been explained by the complainant in her complaint. In any case, it is an admitted position that there was no enmity between the present applicant and the deceased. Under these circumstances, in my view, this is a fit case for grant of anticipatory bail. In the result, in the event of arrest of the applicant in connection with C.R.No.170/2005 registered by Akalkot North Police Station, the applicant be released on bail in the sum of Rs.10,000/- with one or two sureties in the like amount. The applicant shall report to the Akalkot North Police Station for a period of one week from 17.1.2006 between 11.00 a.m. and 5.00 p.m. The application is allowed in the above terms.

[V.M.KANADE,J]